



Artscape Utility Centre, D.F. Malan St, Foreshore, Cape Town, 8001 / 083-960-6071 / info@tumsa.org / www.tumsa.org / Reg. 2018/301871/08

## **SUBMISSION BY TUMSA to the NCOP on CAB and PPAB (March 2023)**

**A)** Since early 2017, (even before our formal registration with CIPC in 2018) TUMSA has been operating as a **Trade Union for Musicians of South Africa** and we firstly wish to specifically clarify that that the vast majority of our members are both Professional **Composers/Authors (Lyrical)** as well as **Music Performers** and therefore direct stakeholders in **both** of these Bills.

We further wish to note that the enactment of the PPAB is inter-twined with- and dependent on the enactment of the CAB No 24 of 2016. As such we further note and support the overall thrust and purpose of the CAB which is to:

- a) provide a comprehensive copyright system across all levels and intersecting levels, that draws and adapts international best practice systems to suit our national contest,
- and
- b) realise the resolutions in this regard taken by the 55th Conference of the ANC which is the current ruling party in government.

The afore-mentioned resolution speaks to the exploitation of our Members and their creative products by private companies. This exploitation results in our artist and creatives dying as paupers. It is therefore not surprising that the 55th Conference resolved that the CAB and PPAB must urgently be passed by Parliament and enacted/signed into law by the President.

We welcome the attempt to give effect to the policy and legislative directives of the ruling party in government and their alliance and social compact partners.

Furthermore, we appreciate that amendments advocated by the South African Democratic Teacher's Union (SADTU), towards ensuring free or very low-cost education material for the disenfranchised masses of our people, has been successfully incorporated into the CAB.

**B)** However, while supporting the Bill, we submit that the current Clause 12 (A to D) on "**fair use**" must distinctly and unambiguously differentiate between the copyrights of authors of academic and educational works as being distinct of copyright of works for example of music composers / authors (lyrical) and other similar such sub-sectors within the overarching arts and culture sector. The mere existence of these sub-sectors within the overarching sector attests to the need for us to be cautious about applying a "one size fits all" lens when refining this critical DRAFT Clause 12 (A to D).

Since the beginning of this process of Amendment, Members of the Music Sector specifically have been almost unanimous in advising and informing two successive Portfolio Committees that the specific needs, challenges and modern Digital distribution channels of the Music sub-sector is different from the sub-sector that entails authors producing academic works.

We are also aware that the CAB includes intellectual property pertaining to scientific and technological inventions/inventors in additional to the creative and literature sectors. Therefore we submit that the formulation of clauses in the CAB must not hamper or obstruct the exploration and innovation of new ideas by vague and/or over-flexible usage exceptions that could inadvertently expose them to IP infringements.

We therefore submit that a simple and concise additional sub-clause be added to the current Section 12. This additional sub-clause (being 12E) must explicitly differentiate between “fair use” in relation to Music composition/authorship as opposed to Academic Literary works.

Our proposed wording for the additional sub-clause 12E is:

**12E) “Notwithstanding S12A and S12D, any use by or for persons benefitting from or engaged in primary or secondary education, or further and ongoing education, adult literacy and adult education shall be deemed fair use, provided that the use is restricted to literary works or in respect of other categories of works and performances is limited to instances where no licence is available within a reasonable time and at a reasonable price”.**

**C)** Lastly, we support and recognise that the potential in the creative economy has been vastly under-explored explored and insufficiently monetized for most South African creatives. We will therefore support any measures seeking to Promote Local Content as an Economic Imperative, the need for which **was included in both reports (MITT 2001 and CRC 2011) informing the critical need for these Amendments.** Yet there is no mention of this in either of these Bills, whilst Foreign Music and Visual content still overwhelmingly dominates the media exposure of most South Africans, especially in the Commercial Broadcasting Media, where advertising spend is at its premium. Despite our appeals to the Portfolio Committee in this matter, our calls fell on deaf ears.

**In Conclusion**, we re-state our support for both these Bills but with the additional proposed sub-clause 12E as being critical bills to democratise, transform and fully ensure access with optimal beneficitation to all.

*We thank the Council / Committee for considering our sincere submission!*

**TUMSA – Trade Union for Musicians of SA.  
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